THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No.11920 of 2000

Date: 09.10.2007

Between:

1. M/s. S.S.Enterprises, Dacharam, Gajwel Mandal, Medak District, rep. by its Managing Partner, Sri Vemula Balaiah and others

...PETITIONER(S)

A N D

1. State of Andhra Pradesh through The Sub Inspector of Police, Piduguralla Police Station, Guntur District and another

...RESPONDENT(S)

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

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ORDER:

Second respondent which deals in cotton under the name and style of Sri Shirdi Saibaba Cotton Company at Piduguralla filed a private complaint alleging that first petitioner partnership concern, in which the second petitioner is the Managing Partner and petitioners 3 and 4 are the other partners, purchased cotton worth more than 12 lakhs under 5 invoices and paid only Rs.8,60,210/- by making false representations that they will pay the balance amount due within a month and failed to make the payment and thus played fraud and hence are liable to be punished under Section 420 and 406 IPC. The learned Magistrate referred that complaint to police under Section 156(3) Cr.P.C. for investigation, basing on which the police issued an FIR. This petition is filed to quash the said FIR.

2. The contention of the learned counsel for petitioner is that inasmuch as the averments in the complaint disclose that transaction between the second respondent and the petitioners is a sale, and as the necessary ingredients for making out an offence under Section 420 IPC are not found therein, even assuming that all the allegations in the complaint are true, as no offence either under Section 420 IPC or Section 406 IPC can be said to have been committed by the petitioners and as the second respondent filed the complaint only with a view to harass the petitioners by dragging them into a criminal court, in view of the ratio in **G.SAGAR SURI v. STATE OF U.P.**[1] the FIR against the petitioners is liable to be quashed. Heard the learned Government

Pleader for Home. As there was no representation on behalf of second respondent on 03.10.2007 when the matter was heard, the case is posted to today. But, today also there is no representation on behalf of the second respondent.

4. The averments in the complaint show that the transaction between the second respondent and petitioners is a transaction of sale under which petitioners paid some amount of price and failed to pay the balance in spite of requests by the second respondent. So, this is a case of breach of contract. The necessary averments to make the omission of the petitioners to pay the remaining balance an offence of cheating are not spelt out in the complaint. In case of sale, the relationship between the parties would be that of a vendor and purchaser but not that of a trustee and beneficiary. So, no question of breach of trust arises in case of sale. Purchaser, who becomes the owner of the property sold by the seller, has a right to deal with the property in the manner he likes. The liability of the buyer is to pay the price. If the price payable, as per the terms of the agreement between the parties, is not paid, it does not *ipso facto* amount to cheating. Second respondent with an intention to recover the amount due to him from the petitioners by dragging them to a criminal court seems to have filed the complaint, which is but an abuse of the process of law. Therefore, the FIR registered against the petitioners is liable to be and hence is quashed.

5. The writ petition is accordingly allowed. No costs.

09.10.2007

Cvrk

[1] 2000 SCC (Cri) 513